

Health and Human Services

324.103

PART 324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 324.1—Protection of Individual Privacy

- Sec.
324.100 Scope of subpart.
324.102 General.
324.103 Procedures.

Subpart 324.2—Freedom of Information Act

- 324.202 Policy.

Subpart 324.70—Confidentiality of Information

- 324.7001 General.
324.7002 Policy.
324.7003 Applicability.
324.7004 Required clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

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Subpart 324.1—Protection of Individual Privacy

324.100 Scope of subpart.

This subpart implements 45 CFR Part 5b, Privacy Act Regulations, and FAR Subpart 24.1, Protection of Individual Privacy, which implements the Privacy Act of 1974 (Public Law 93-579, December 31, 1974; 5 U.S.C. 552a) and OMB Circular No. A-108, July 9, 1975.

324.102 General.

(a) It is the Department's policy to protect the privacy of individuals to the maximum possible extent while permitting the exchange of records required to fulfill the Department's administrative and program responsibilities and its responsibilities for disclosing records to which the general public is entitled under the Freedom of Information Act (5 U.S.C. 552). The Privacy Act of 1974 and the Department's implementation under 45 CFR part 5b apply "when an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish any agency function* * *" The key factor is whether a departmental function is involved. Therefore, the Privacy Act requirements apply to a departmental con-

tract when, under the contract, the contractor must maintain or operate a system of records to accomplish a departmental function.

(e) The program official, and, as necessary, the official designated as the activity's Privacy Act Coordinator and the Office of General Counsel, shall determine the applicability of the Act to each proposed acquisition. The program official is required to include a statement in the request for contract indicating whether the Privacy Act is or is not applicable to the proposed acquisition.

(f) Whenever the contracting officer is informed that the Privacy Act is not applicable, but the resultant contract will involve the collection of individually identifiable personal data by the contractor, the contracting officer shall include provisions to protect the confidentiality of the records and the privacy of individuals identified in the records (see subpart 324.70).

324.103 Procedures.

(a) All requests for contract shall be reviewed by the contracting officer to determine whether the Privacy Act requirements are applicable. If applicable, the contracting officer shall include the solicitation notification and contract clause required by FAR 24.104 in the solicitation, and the contract clause in the resultant contract. In addition, the contracting officer shall ensure that the solicitation notification, contract clause, and other pertinent information specified in this subpart are included in any contract modification which results in the Privacy Act requirements becoming applicable to a contract.

(b)(1) The contracting officer shall identify the system(s) of records on individuals in solicitations, contracts, and contract modifications to which the Privacy Act and the implementing regulations are applicable.

(2) The contracting officer shall include a statement in the contract notifying the contractor that the contractor and its employees are subject to criminal penalties for violations of the Act (5 U.S.C. 552a(i)) to the same extent as employees of the Department. The statement shall require that